

DEPARTMENT OF TRANSPORTATION

Research and Special Programs
Administration

49 CFR Part 173

(Docket No. HM-198A; Amdt. No. 173-227)

RIN 2137-AB31

Elevated Temperature Materials

AGENCY: Research and Special Programs Administration (RSPA), DOT.**ACTION:** Final rule; delay of compliance dates.

SUMMARY: RSPA is delaying the compliance dates for certain provisions of a final rule concerning elevated temperature materials and clarifying the effective date of this final rule in conjunction with the final rule published December 21, 1990, under Docket HM-181. This action is in response to numerous petitions asking RSPA to delay the compliance dates contained in the rule to allow affected entities sufficient time to come into compliance with the new requirements and to provide RSPA additional time to review petitions for reconsideration received in response to the final rule. RSPA will respond to other petitions for reconsideration in a separate document.

Effective date: These amendments are effective March 30, 1992. However, compliance with the regulations as amended herein is authorized as of October 30, 1991.

FOR FURTHER INFORMATION CONTACT:

Beth Romo, Office of Hazardous Materials Standards, (202) 366-4488, or James K. O'Steen, Office of Hazardous Materials Technology, (202) 366-4545, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: On October 2, 1991, RSPA published a final rule (Docket HM-198A; 56 FR 49980) amending the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) to regulate materials which pose a hazard due to their being offered for transportation or transported at elevated temperatures. The final rule established requirements to communicate the hazards of these elevated temperature materials by means of marking, shipping papers and placarding, and to prescribe packaging requirements for these materials. Based on the petitions received, RSPA finds it impracticable to take action and respond to certain substantive issues identified in the petitions within the 90-day period prescribed by 49 CFR 171.15(b). In addition, RSPA has received requests from six petitioners, representing cargo tank manufacturers and shippers, to delay the effective date of the final rule. The petitioners stated that additional time is needed for newly-regulated entities to come into compliance with the new requirements.

Delaying certain compliance dates allows RSPA an opportunity to more thoroughly study issues raised in the petitions for reconsideration and to prepare an appropriate response.

Clarification of Effective Date

This final rule is effective March 30, 1992. However, under the transition provisions of the Docket HM-181 final rule, as revised on December 20, 1991 (56 FR 66124), in § 171.14 (b)(3) and (b)(4), classification and hazard communication requirements may be delayed until October 1, 1993, except for placarding requirements which may be delayed until October 1, 1994.

Summary of Compliance Dates

October 30, 1991: Compliance with the regulations is authorized.

October 1, 1993: Authorized packagings in service prior to October 1, 1993, and not in full compliance with § 173.247(b), may continue to be used for up to 20 years from their date of manufacture. All packagings manufactured after this date must be in compliance with the packaging standards contained in § 173.247(b).

March 30, 1995: All authorized packagings must conform to closure requirements contained in § 173.247(b)(2). Packagings used for transportation of asphalt or bitumen also must be in conformance with § 173.247 (b)(5) and (b)(6).

Administrative Notices**A. Executive Order 12291**

This final rule has been reviewed under the criteria specified in § 1(b) of Executive Order 12291 and (1) is determined not to be a major rule; (2) is determined not to be a significant rule under the regulatory procedures of the Department of Transportation (44 FR 11034); and (3) does not require a Regulatory Impact Analysis, or an environmental impact statement under the National Environmental Policy Act (42 U.S.C., 4321 *et seq.*) This final rule does not impose additional requirements and has the net result of reducing costs imposed under the final rule published in the Federal Register on October 2, 1991, without reducing safety (56 FR 49980). The original regulatory evaluation of the final rule was not modified because this final rule does not impose additional requirements and does not make substantive changes to the final rule. That document is available for review in the docket.

B. Executive Order 12612

This action has been analyzed in accordance with Executive Order 12612 ("Federalism"). It has no substantial direct effect on the States, on the current Federal-State relationship, or the current distribution of power and responsibilities among levels of government. Thus this final rule contains no policies that have

Executive Order 12612, and no Federalism Assessment is required.

C. Impact on Small Entities

Based on available information, I certify that the changes in this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A regulatory flexibility analysis prepared for the October 2, 1991 final rule is available for review in the docket.

D. Paperwork Reduction Act

This amendment imposes no changes to the information collection and recordkeeping requirements contained in the October 2, 1991 final rule, which was approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 under OMB control number 2137-0034 (expiration date: June 30, 1992).

E. Regulatory Information Number (RIN)

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, 49 CFR part 173, as amended in the final rule published October 2, 1991 (56 FR 49989), is further amended as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. The authority citation for part 173 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808, 1817; 49 CFR part 1, unless otherwise noted.

§ 173.247 [Amended]

2. In § 173.247, as added on page 49989, the following changes are made:
 - a. In paragraph (c)(5), the date "March 30, 1993" is revised to read "October 1, 1993".
 - b. In paragraph (d)(2), the date "March 30, 1993" is revised to read "March 30, 1995".
 - c. In paragraphs (d)(3) and (d)(4), the date "March 30, 1993" is revised to read "October 1, 1993" both places it appears.

Issued in Washington, DC on December 24, 1991, under authority delegated in 49 CFR part 1.

Douglas B. Ham,
Deputy Administrator, Research and Special